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12 Leprino Foods Health & Welfare Plan

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
15

16 LEPRINO FOODS COMPANY,
17 LEPRINO FOODS HEALTH &
18 WELFARE PLAN,

19 Plaintiffs,

20 v.

21 AVANI OUTPATIENT SURGICAL
22 CENTER, INC., a California
23 Corporation; MOUNTAIN VIEW
24 SURGICAL CENTER, INC., a
25 California Corporation; THE
26 CENTER FOR SURGERY AT
27 BEDFORD, LLC, a California limited
28 liability company; AMY ZARAGOZA,
an individual; BABEK
MOEINOLMOLKI, an individual;
BENHAM KASHANCHI, an
individual; SAMUEL KASHANI, an
individual; SHERVIN AMINPOUR,
an individual; RALPH MAYER, an
individual; MICHAEL YADEGARI,
an individual; KARAPET

Case No. 2:22-cv-7434

COMPLAINT

DEMAND FOR JURY TRIAL

1 DERMENDJIAN, an individual;
 2 SEPEHR LALEZARI, an individual;
 3 MARIO ROSENBERG, an
 4 individual; PEYMAN
 5 SOLIEMANZADEH, an individual;
 6 and DOES 1-30,

7
 8 Defendants.

9
 10 This is an action brought by Plaintiffs Leprino Foods Company and
 11 Leprino Foods Health & Welfare Plan on behalf of itself and its plan enrollees
 12 (referred to herein as "Leprino") against Defendants Avani Outpatient Surgical
 13 Center, Inc., Mountain View Surgical Center, Inc., The Center for Surgery at
 14 Bedford, LLC, Amy Zaragoza, Babek Moeinolmolki, Behnam Kashanchi,
 15 Samuel Kashani, Shervin Aminpour, Ralph Mayer, Michael Yadegari, Karapet
 16 Dermendjian, Sepehr Lalezari, Mario Rosenberg, Peyman Soliemanzadeh,
 17 and DOES 1-30 (collectively, the "Defendants").

18 **I. Introduction**

19
 20 1. This action involves a healthcare fraud scheme targeting Leprino
 21 and its employee health plan. The Defendants, a group of corrupt outpatient
 22 surgery centers in Southern California and their owners, staff, physicians, and
 23 affiliated healthcare providers implemented a complex scheme by which they
 24 recruited patients for multiple unnecessary surgeries, often performed within a
 25 few months on the same patient, in exchange for a cash payment or
 26 inducement, such as discounted cosmetic surgery. Over the course of
 27 approximately two and a half years, the surgery centers then sent fraudulent
 28 and inflated bills to Leprino amounting to approximately \$15.5 million dollars.

29 **II. Parties**

30
 31 2. Plaintiff Leprino Foods Company is a family-owned company that
 32 privately pays for its employee health expenses. Leprino Foods Company's

1 principal place of business is in Denver, Colorado.

2 3. Plaintiff Leprino Foods Health & Welfare Plan (the "Plan") is an
3 employer-sponsored group health plan governed by the federal Employee
4 Retirement and Income Security Act of 1974, as amended ("ERISA"). The
5 Plan is considered "self-funded" or "self-insured" because the employer retains
6 the financial risk of paying for health care claims. The Plan covers employees
7 residing in the States of California, New Mexico, Colorado, and others

8 4. Defendant Avani Outpatient Surgical Center, Inc. ("Avani") is an
9 accredited surgery center pursuant to AAAHC, meaning that it has Medicare
10 deemed status, and, on information and belief, is subject to Medicare rules and
11 regulations as they relate to patient safety, coding and billing, and other
12 conditions of participation specific to surgery centers. Avani is located in
13 Encino, California, in the County of Los Angeles.

14 5. Defendant Mountain View Surgical Center, Inc. ("Mountain View")
15 is no longer an accredited surgery center, meaning it should no longer be
16 performing procedures which involve the administration of anesthesia in doses
17 that have the probability of placing a patient at risk for the loss of life preserving
18 protective reflexes. However, Mountain View was accredited during all
19 relevant times that it was engaging in the submission of claims to Leprino.
20 Mountain View is located at the same physical building as Avani, in Encino,
21 California, in the County of Los Angeles.

22 6. Defendant The Center for Surgery at Bedford, LLC ("Bedford") is
23 an accredited surgery center pursuant to AAAHC, meaning that it has Medicare
24 deemed status, and, on information and belief, is subject to Medicare rules and
25 regulations as they relate to patient safety, coding and billing, and other
26 conditions of participation specific to surgery centers. Bedford is located in
27 Beverly Hills, California, in the County of Los Angeles.

28 7. The three Defendant surgery centers are referred to collectively

1 herein as "Surgery Center Defendants."

2 8. Defendant Amy Zaragoza ("Ms. Zaragoza") is an individual and
3 former employee of Leprino who resides in the County of Los Angeles,
4 California.

5 9. Defendant Babek Moeinolmolki is an individual with a California
6 physician and surgeon's license in active standing who billed for surgeries and
7 other claims for patients who underwent procedures at all three Surgery Center
8 Defendants. Upon information and belief, Dr. Moeinolmolki resides in the
9 County of Los Angeles.

10 10. Defendant Behnam Kashanchi is an individual with a California
11 physician and surgeon's license in active standing who billed for surgeries and
12 other claims for patients who underwent procedures at Avani and Mountain
13 View. Upon information and belief, Dr. Kashanchi resides in the County of Los
14 Angeles and holds himself out to the public as a plastic surgeon.

15 11. Defendant Samuel Kashani is an individual with a California
16 physician and surgeon's license in active standing who billed for surgeries and
17 other claims for patients who underwent procedures at Avani and Mountain
18 View. Upon information and belief, Dr. Kashani resides in the County of Los
19 Angeles.

20 12. Defendant Shervin Aminpour is an individual with a California
21 physician and surgeon's license in active standing who billed for surgeries and
22 other claims for patients who underwent procedures at all three Surgery Center
23 Defendants. Upon information and belief, Dr. Aminpour resides in the County
24 of Los Angeles and holds himself out to the public as a plastic surgeon.

25 13. Defendant Ralph Mayer is an individual with a California physician
26 and surgeon's license in active standing who billed for surgeries and other
27 claims for patients who underwent procedures at Mountain View and Bedford.
28 Upon information and belief, Dr. Mayer resides in the County of Los Angeles.

1 14. Defendant Michael Yadegari is an individual with a California
2 physician and surgeon's license in active standing who billed for surgeries and
3 other claims for patients who underwent procedures at Mountain View and
4 Bedford. Upon information and belief, Dr. Yadegari resides in the County of
5 Los Angeles.

6 15. Defendant Karapet Dermendjian is an individual with a California
7 physician and surgeon's license in active standing who billed for surgeries and
8 other claims for patients who received procedures at Bedford. Upon
9 information and belief, Dr. Dermendjian resides in the County of Los Angeles.

10 16. Defendant Sepehr Lalezari is an individual with a California
11 physician and surgeon's license in active standing who billed for surgeries and
12 other claims for patients who received procedures at Bedford. Upon
13 information and belief, Dr. Lalezari resides in the County of Los Angeles.

14 17. Defendant Mario Rosenberg is an individual with a California
15 physician and surgeon's license in active standing who billed for surgeries and
16 other claims for patients who received procedures at Bedford. Upon
17 information and belief, Dr. Rosenberg resides in the County of Los Angeles.

18 18. Defendant Peyman Soliemanzadeh is an individual with a
19 California physician and surgeon's license in active standing who billed for
20 surgeries and other claims for patients who received procedures at Bedford.
21 Upon information and belief, Dr. Soliemanzadeh resides in the County of Los
22 Angeles and holds himself out to the public as a plastic surgeon.

23 19. Plaintiffs are currently unaware of the true names and capacities of
24 those Defendants named and sued herein as DOES 1-30 and for that reason
25 have sued said Defendants by such fictitious names. Plaintiffs will seek leave
26 to amend this Complaint to reflect their true names when ascertained, and
27 accordingly allege, that each of the Defendants sued herein as DOES 1-30 is
28 responsible in some manner for the occurrences alleged in this action.

1 Plaintiffs are further informed and believe that DOES 1-30 were the agent(s),
2 partner(s), joint venturer(s), representative(s), and/or employee(s) of the
3 named Defendants and, at all times, were acting within the course and scope
4 of such agency, partnership, joint venture, representation, and/or employment
5 in carrying out the activities described herein.

6 **III. Jurisdiction and Venue**

7 20. The Court has jurisdiction over the parties pursuant to 28 U.S.C. §
8 1331, because the action arises under the laws of the United States; pursuant
9 to 18 U.S.C. § 1332(a), because the suit concerns an amount in controversy
10 of \$75,000 or greater between citizens of different states. Leprino Foods
11 Company is located and has its principal place of business in the State of
12 Colorado. The Defendant entities are located in and organized under the laws
13 of the State of California, and the individuals reside and work in the County of
14 Los Angeles, in the State of California. The Court may and should exercise
15 jurisdiction pursuant to 28 U.S.C. § 1367, because state and common law
16 claims are so related to the federal claims that they form part of the same case
17 or controversy.

18 21. This Court is the proper venue for this action pursuant to 28 U.S.C.
19 § 1391(b) because a substantial part of the events or omissions giving rise to
20 Leprino's claims occurred in this Judicial District, and, alternatively, because
21 the Defendants may be found in this Judicial District, and there is no Judicial
22 District in which this action may otherwise be brought.

23 **IV. Factual Allegations**

24 22. In or about October 2020, Leprino received a tip from an employee
25 that another Leprino employee – Amy Zaragoza – was working for Mountain
26 View at the same time that she was employed by Leprino. Ms. Zaragoza was
27 purportedly recruiting Leprino employees for "mommy makeovers" in exchange
28 for a fee per patient, otherwise known in healthcare as an unlawful kickback

1 scheme. Following an inquiry into Ms. Zaragoza's conduct, Leprino learned
2 that several Leprino employees had been recruited for "mommy makeovers"
3 or other medically unnecessary surgeries to be performed at Mountain View.

4 23. In the spring of 2020, shortly after a lawsuit was dismissed against
5 Mountain View, Mountain View began using the Avani name to bill claims, and,
6 within two or three months, ceased using the name Mountain View altogether.
7 In or about the same time, Mountain View and Avani's CEO Charles Neal, M.D.
8 (or his designee) increased the fee schedule, which, in turn, increased the
9 profitability of each claim billed by Avani. Avani continued engaging in several
10 other fraudulent billing and coding practices, as discussed in more detail below.

11 24. Around the same time, Leprino learned that Bedford was billing
12 claims at 10-20 times the usual and customary rate ("UCR") for healthcare
13 services and was one of the top out-of-network billers in the entire Plan, which
14 covers employees across the United States. Bedford advertises the same
15 procedures as Avani and Mountain View, including vaginal repair procedures,
16 endoscopies, hernia repair, and nasal repair. Bedford will often charge
17 amounts not quite identical to, but close to the same rate amount as Avani,
18 making Avani another of the top out-of-network billers. Meanwhile, Mountain
19 View and Avani often charged the exact same amount for the same procedure,
20 down to the cent.

21 25. Bedford has a connection to Mountain View and Avani, as there
22 are at least four surgeons who regularly billed claims for patients receiving
23 procedures at all three Surgery Center Defendants. At least 41 patients (out
24 of 59 patients) underwent procedures at more than one of the surgery centers.

25 ///

26 ///

26. The table below sets forth the identities of the overlapping surgeons and locations of Avani, Mountain View and Bedford.

Surgery Center	Location	Surgeons (Non-Exhaustive List)
Mountain View Surgical Center	16311 Ventura Blvd. Suites 705 and 710 Encino, CA 91436	Babek Moeinmolki Behnam Kashanchi Samuel Kashani Shervin Aminpour Ralph Mayer Michael Yadegari
Avani Outpatient Surgical Center	16311 Ventura Blvd. Suite 710 Encino, CA 91436	Babek Moeinmolki Behnam Kashanchi Samuel Kashani Shervin Aminpour
The Center for Surgery at Bedford	436 N. Bedford Dr. Suite 101 Beverly Hills, CA 90210	Babek Moeinmolki Shervin Aminpour Ralph Mayer Michael Yadegari

27. During the course of an investigation, which took months to unwind the true extent of the fraud, Leprino uncovered false and fraudulent coding and billing practices by all three Surgery Center Defendants, including, but not limited to: (1) billing for medically unnecessary procedures or procedures that were billed but not provided; (2) billing for more than one procedure on the same day at the same time on the same patient by the same surgeon; (3) upcoding, unbundling and billing unlisted codes; and (4) billing for anesthesia as if this service was provided by the treating surgeon at the same time that the surgeon was performing the surgery.

28. The Surgery Center Defendants have provided medically unnecessary endoscopies on a substantial number of patients. Based on the billing submitted, all three Surgery Center Defendants billed Leprino for a "biopsy" in 100% of the endoscopies performed on patients. The likelihood that every single patient that underwent an endoscopy needed a biopsy is very

1 low. At the same time, charging for a biopsy allows the facility to collect double
2 the payment that would have been made for an endoscopy alone. In addition,
3 Defendant Bedford unbundled the code for "surgical supplies" every single time
4 that it billed Leprino for an endoscopy in violation of the accepted coding rules
5 as another way of increasing the payment made.

6 29. Moreover, endoscopies are not the type of surgery that necessitate
7 traveling to a different part of the state, or another state, in order to receive
8 one. Yet, at the time of their procedures, none of the 59 patients treated by the
9 Surgery Center Defendants resided in Los Angeles County, Ventura County,
10 or even Orange County. They were recruited from south San Diego County or
11 Central California and in some cases as far away as the State of New Mexico.

12 30. The Surgery Center Defendants also used modifier 59, which is a
13 method used to bypass the computer system and obtain payments on multiple
14 surgical procedures performed on the same day, at the same time, by the same
15 provider, at the same facility. For example, CPT Codes 57260 and 57220 may
16 not be billed together, but including modifier 59 allowed Defendants to obtain
17 payment on both of these codes.

18 31. As another example, Defendants billed for outpatient psychiatry
19 services on the same day that the patient underwent surgery, in connection
20 with Patients 1, 9, 14, 15, 29, 30, 36, 41, 42, 43, 45, and 52. If the patients
21 were unconscious or under the effects of anesthesia, it would not have been
22 possible for the surgeon to provide outpatient psychiatry services at the same
23 time.

24 32. Similarly, the billing appears to be incomplete, which suggests that
25 what was coded was not actually performed. For each day of surgery, the
26 following should be a separately billed as three distinct claims: (1) facility fee;
27 (2) surgeon fee; and (3) anesthesia provider fee. The below chart provides
28 examples from Patients 1 and 2. In the case of Patient 1, there is a bill for

1 anesthesia for a hernia repair, but no corresponding hernia surgery, which
 2 means that the claim was not billable. In fact, the same patient – two weeks
 3 after purportedly having a hernia repaired – was subjected to an endoscopy,
 4 which is also indicative of billing fraud.

Patient	Date of Surgery	Facility Billed	Surgeon Billed	Anesthesia Billed	Procedure Provided
1	6/21/2021			X	Hernia repair
1	7/6/2021	X	X		Endoscopy with Biopsy
2	7/1/2020	X	X		Nasal repair with graft
2	8/21/2020	X			Ovarian incision
2	10/22/2020	X			Hernia repair

16 33. In addition, the billing for anesthesia appears to have been done
 17 almost exclusively using the National Provider Identifier ("NPI") of the surgeon,
 18 even though insurance and Medicare rules require that a separate anesthesia
 19 provider perform the anesthesia for patient safety purposes. Moreover, a
 20 gastrointestinal surgeon, for example, would not be certified to perform
 21 anesthesia under a general surgeon's license. Anesthesia requires separate
 22 certifications and training. Yet, based on the systematic billing of anesthesia
 23 under the surgeons' NPI number, what was billed is not what was done, which
 24 constitutes fraud.

25 34. On several occasions, the Surgery Center Defendants used
 26 unlisted codes, which are only to be used as a last resort, only when no other
 27 CPT code accurately describes the procedure or service being billed. This is
 28 because there is no established fee schedule for unlisted codes, and higher

1 charges lead to greater payments. As one might expect, Defendants charged
2 the unlisted codes on at least 22 of the 59 patients and the fees are excessive,
3 for example, charging \$47,500 to take diagnostic radiology images of the
4 patient's body.

5 35. Yet another area of concern is the lack of any pre- or post-operative
6 visits with the physicians, which risks harming the patients. Typically, in order
7 to receive payment, surgeons have to show that they evaluated the patient in
8 the office and performed examinations and screenings to determine that
9 surgery is medically necessary. Here, none of the surgeons conducted a pre-
10 surgery office visit.

11 36. In fact, based on the bills submitted by Defendants, only two out of
12 59 patients received an office visit from one of the surgeons. Those two office
13 visits were billed on the same day of the surgery, which violates the rule against
14 ordering the surgery and performing the surgery on the same day.

15 37. To multiply the fraudulent billings for Defendants, they routinely
16 performed and billed Leprino for several procedures within a short period of
17 time on the same patient. For example, they billed three surgeries in three
18 consecutive months for one patient, which would not have allowed the patient
19 to physically recover from one surgery before receiving the next one. Based
20 on the billing, the following is a non-exhaustive list of patients who underwent
21 three surgeries within a few months of each other:

- 22 • For Patient 2, Mountain View billed for a head/neck/throat surgery
23 in July 2020, followed by a gastrointestinal surgery in August 2020,
24 followed by another gastrointestinal surgery in October 2020 (three
25 surgeries in four months).
- 26 • For Patient 36, Mountain View and then Avani billed for a
27 gynecology surgery in November 2020, followed by a
28 gastrointestinal surgery in December 2020, another

gastrointestinal surgery in March 2021, and a third gastrointestinal surgery in May 2021 (four surgeries in six months).

- For Patient 39, Bedford billed for a head/neck/throat surgery in May 2020, followed by a gastrointestinal surgery in June 2020, and then an orthosurgery in July 2020 (three surgeries in three months).
- For Patient 41, Mountain View and then Avani billed for a gynecology surgery in December 2020, followed by a breast surgery in February 2021 followed by a gastrointestinal surgery in March 2021 (three surgeries in four months).

38. Based on the evidence gathered, to date, the Surgery Center Defendants were engaging in multiple false and fraudulent activities, including, but not limited to: (1) charging Leprino for various surgeries but providing the patients with cosmetic surgery or some other inducement; (2) charging and providing medically unnecessary surgeries including the above; (3) charging for services, including anesthesia services, that were not actually provided or were provided by someone else; and (4) paying for referrals from Leprino employee Ms. Zaragoza (and possibly others) to refer patients and/or to procure patients' insurance information for purposes of submitting false and fraudulent claims.

39. Together, the three Surgery Center Defendants were the at the top of the list of all providers paid by Leprino for healthcare services billed to the Plan, resulting in payments of nearly \$2 million in two and a half years.

40. On information and belief, the Leprino employees are just one group of patients recruited from the same workplace by the Surgery Center Defendants, and they have engaged in the same misconduct with respect to other employers and other employer sponsored health plans.

V. First Claim for Relief: Fraud Against All Defendants

41. Leprino realleges and incorporates herein by reference each and

1 every allegation contained in paragraphs 1 through 40, inclusive.

2 42. Defendants did knowingly and willfully execute a scheme and
3 artifice to defraud Leprino by obtaining, under false and fraudulent pretenses,
4 representations and promises, money and property owned by, or under the
5 custody or control of Leprino, in connection with the delivery of or payment for
6 health care benefits, items or services.

7 43. All Defendants had knowledge of the wrongful scheme and
8 intended to defraud Leprino, despite their legal duty to submit timely and
9 accurate claims for payment.

10 44. In furtherance of the scheme and artifice to defraud, by way of non-
11 exhaustive examples, Defendants knowingly and willfully submitted; or
12 participated a scheme to knowingly and willfully aid in the submission of:

13 (a) Fraudulent claims that failed to disclose that Defendants had
14 induced the patients through payments, benefits and copayment waivers to
15 undergo surgeries;

16 (b) Fraudulent claims that misrepresented the nature of the procedure
17 performed, for example, billing for a covered procedure and providing plastic
18 surgery (a non-covered procedure) in lieu of the procedure billed;

19 (c) Fraudulent claims that sought payment for services that were
20 charged using inflated CPT codes, unlisted CPT codes, and unbundled CPT
21 codes;

22 (d) Fraudulent claims that demanded exorbitant fees for basic
23 healthcare services, including, through use of falsified and unlisted CPT codes;

24 (e) Fraudulent claims that sought payment for procedures and
25 services that were never provided;

26 (f) Fraudulent claims that sought payment for anesthesia services that
27 were billed as if they were performed by the surgeon at the same time as the
28 surgeon was performing the surgery; and

1 (g) Fraudulent claims that were tainted by an unlawful kickback
2 scheme.

3 45. Defendants submitted these materially misleading and fraudulent
4 claim statements and invoices to Leprino, all the while knowing of their falsity
5 when made. Defendants, for example, knew at the time that they submitted
6 such claims that the Defendants had not provided the services as billed and
7 coded, and instead, were intended to maximize the amount of revenue
8 collected by the Defendants.

9 46. Defendants' scheme to defraud was intended to and did induce
10 Leprino's reliance in paying these fraudulent claims. Given (a) the physician's
11 duty to do what is in the best interest of the patients, (b) that providers are
12 required to truthfully and accurately report the care provided to patients using
13 claim forms with CPT coding that follows the generally accepted practices of
14 the coding industry, and (c) the providers' duty to comply with the rules and
15 regulations imposed Federally and in the State of California for provision of
16 patient care, billing and claims, Leprino reasonably relied upon Defendants'
17 claims as truthful and accurate statements of the care provided in making
18 payment to the Defendants.

19 47. As a direct and proximate result of this scheme, Leprino paid nearly
20 \$2 million in payments based on the fraudulent charges billed by Defendants.
21 Leprino has been damaged by paying to Defendants amounts far in excess of
22 what Leprino would have otherwise paid, and what could have been used to
23 pay for legitimate claims.

24 48. Defendants acted intentionally and in conscious disregard of the
25 rights of Leprino, with malice, oppression or fraud in that they knew their
26 conduct was fraudulent and would result in severe economic harm to Leprino.
27 Accordingly, Leprino is entitled to an award of punitive damages against
28 Defendants.

VI. Second Claim for Relief: Restitution under ERISA § 502(a)(3)
Against all Defendants

49. Leprino realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 40, inclusive.

50. Leprino has discretionary authority and control over the administration and management of the Plan's assets, and is a Plan fiduciary under ERISA § 3(21)(A). As an ERISA plan fiduciary, Leprino has standing under ERISA § 502(a)(3) to enforce the terms of the Plan and pursue any overpayments that are made to patients or providers on their behalf. For example, the Plan states that it "has the right to seek reimbursement of any overpayments. . . [and] the Plan may file a lawsuit in its name or [any patient's] name to pursue recovery . . . from . . . any other involved individuals, insurance companies or organizations." "To the extent that the Plan makes an overpayment or erroneous payment, an equitable lien will be crated on such overpayment or erroneous payment. The lien will remain in effect until the Plan is repaid in full, and the overpayment or erroneous payment will be held in trust for the benefit of the Plan." Therefore, Leprino seeks equitable relief to redress violations of the Plan terms or to enforce Plan terms.

51. As alleged above, Defendants have engaged in a scheme of submitting intentionally misleading, fraudulent and/or erroneous claims, including but not limited to:

(a) Claims that failed to disclose that Defendants had induced the patients through payments, benefits and copayment waivers to get surgeries;

(b) Claims that misrepresented the nature of the procedure performed – i.e., billing for a covered procedure and providing plastic surgery in lieu of the procedure billed;

(c) Claims that sought payment for services that were charged using inflated CPT codes, unlisted CPT codes and unbundled CPT codes;

1 (d) Claims that demanded exorbitant fees for basic healthcare
2 services, including, through use of falsified and unlisted CPT codes;

3 (e) Claims that sought payment for procedures and services that were
4 never provided;

5 (f) Claims that were submitted as if the surgeon concurrently
6 performed anesthesia on the patients; and

7 (g) Claims that were tainted by an unlawful kickback scheme.

8 52. Even to the extent that Defendants did not knowingly and
9 intentionally submit false or inflated claims to Leprino, Leprino is entitled to
10 equitable relief to enforce the terms of the Plan and recover the overpayments
11 made. This is especially true where, as here, Defendants submitted their
12 claims on behalf of Plan members pursuant to contractual assignments or
13 authorized representation agreements received from the patients (the Plan
14 members), and the providers then submitted their claims subject to the terms
15 of the Plan. By accepting payments from the Plan, the Defendants became
16 bound by the Plan's terms and conditions, including those provisions related to
17 overpayments. Here, regardless of the Defendants' intent in submission of the
18 claims, the Plan specifically provides for the Plan's right to recover
19 overpayments made from any involved individuals or organizations. To date,
20 none of the Defendants have returned any monies to Leprino.

21 53. Leprino has paid nearly \$2 million to Defendants, all of which is an
22 overpayment, that is not due or appropriate under the terms of the group-health
23 Plan. Leprino seeks equitable restitution of the specifically-identifiable amount
24 of each claim at issue in this case, which can be tied to a particular Defendant's
25 bank account or practice account.

26 54. The entire amount of each claim is subject to equitable remedies
27 because under applicable law, each claim was tainted by one or more of the
28 fraudulent and unlawful acts set forth above, and the law declares the entire

1 value of the claim "false."

2 55. Defendants retain possession, custody, or control over the bank
3 accounts, and, to the extent that they have removed the particular funds, those
4 sums were transferred to, and remain in, other accounts in the possession,
5 custody, or control of the Defendants, or were exchanged for other property
6 that is in the possession, custody, or control of the Defendants. To the extent
7 that such property itself was subsequently sold or transferred to another entity,
8 that cash or those assets can also be traced.

9 56. Leprino seeks two equitable remedies under ERISA § 502(a)(3).
10 First, Leprino seeks to enforce the Plan terms that require the return of
11 overpayments through an imposition of an equitable lien over the
12 overpayments or assets that can be traced from the overpayments; and the
13 imposition of a constructive trust over the assets. Specifically, Leprino seeks
14 an order executing such lien and requiring that the assets that are subject to
15 this lien be returned to Leprino's Plan, and an order imposing a constructive
16 trust and requiring that the assets held in trust be returned to Leprino's Plan.

17 57. Second, Leprino seeks equitable restitution to recover the assets
18 that the Defendants unlawfully obtained as a result of each payment made on
19 each claim. Leprino seeks an order restoring the amounts to the Plan. To the
20 extent that, at the time of trial, the assets in the bank accounts where Leprino's
21 payments were deposited are less than the value of the amounts to which
22 Leprino is entitled, Leprino requests that the court impose an equitable lien
23 and/or constructive trust over the accounts, assets, or property that can be
24 traced from these accounts.

25 **VII. Third Claim for Relief: Violations of Business & Professions**
26 **Code Sections 17200 et seq. Against All Defendants**

27 58. Leprino realleges and incorporates herein by reference each and
28 every allegation contained in paragraphs 1 through 40, inclusive.

1 59. The conduct referenced above, including the Defendants'
2 submission of false and fraudulent claims for payment, constitutes unlawful,
3 unfair, and fraudulent business practices in violation of California Business &
4 Professions Code §§ 17200 et seq. otherwise known as "Unfair Competition
5 Law" or "UCL." The UCL borrows violations of other statutes, rules and
6 regulations. Here, the conduct alleged violates state and federal prohibitions
7 on the submissions of false and fraudulent claims as well as state and federal
8 fraud and abuse laws, including Cal. Bus. & Prof. Code §§ 650, 810; Cal. Penal
9 Code §§ 549-550; 18 U.S.C. § 1347; and 42 U.S.C. § 1320a-7b.

10 60. In addition to being fraudulent and unlawful, the amounts purported
11 to be charged by the Defendants were unfair in that they violated CPT coding
12 practices and policies to increase amounts payable and used excessive
13 charging to obtain a higher payment amount, causing harm to consumers and
14 competitors of the providers' services.

15 61. Defendants' payment of incentives and referral fees to a patient
16 recruiter (Defendant Zaragoza) is unlawful and unfair under Cal. Bus. & Prof.
17 Code § 650(a) which prohibits the payment of incentives by "licensees" (in this
18 case physicians and surgery center owners) to or from any person or entity in
19 exchange for patient referrals. These illegal and unfair acts interfered with the
20 professional independence of the participating providers in determining proper
21 surgical and medical treatment for their patients, and harmed competitor
22 providers by inducing referrals to the provider that pays or incentivizes care.

23 62. Defendants' conduct and schemes to defraud and engage in unfair
24 and deceptive practices caused harm to consumers and competitors, including
25 to Leprino, specifically, by causing it to pay out monies under false and
26 fraudulent pretenses, which could have been used to provide legitimate and
27 medically necessary services to other patients consuming health services.

28 63. Leprino seeks full restitution and disgorgement of all ill-gotten gains

1 paid to Defendants. In addition, Leprino requests that the court impose an
 2 equitable lien and/or constructive trust over the accounts, assets, or property
 3 of the Defendants.

4 **VIII. Fourth Claim for Relief: Intentional Interference with**
 5 **Contractual Relations Against All Defendants**

6 64. Leprino realleges and incorporates herein by reference each and
 7 every allegation contained in paragraphs 1 through 40, inclusive.

8 65. Leprino has standing to pursue interference with contract as a
 9 direct party to the contract and/or consent signed by each employee agreeing
 10 to abide by the terms and conditions of the Plan.

11 66. As alleged above, the Defendants were aware that health benefit
 12 plans include provisions precluding participants from accepting services from
 13 providers in return for a payment, an inducement (such as plastic surgery) or a
 14 waiver of patient responsibility amounts. These actions caused the patients to
 15 violate their Plan terms and conditions. As a result, Defendants illegally
 16 interfered with the contract with its Plan members.

17 67. As a direct and proximate result of this scheme, the contractual
 18 relations have been harmed in an amount to be determined at trial.

19 68. Defendants acted intentionally and in conscious disregard of the
 20 rights of the patients, with malice, oppression or fraud in that they knew their
 21 conduct was tortious and would result in harm to the patients of Leprino's Plan.
 22 Accordingly, Leprino is entitled to an award of punitive damages against
 23 Defendants.

24 **IX. Prayer for Relief**

25 WHEREFORE, Leprino prays for the following relief:

26 (1) That judgment be entered in favor of Leprino on its claims against
 27 the Defendants in an amount exceeding \$75,000, exclusive of interest or costs.

28 (2) That the Court issue equitable relief requiring the Surgery Center

1 Defendants to return the amounts paid per claim to the Surgery Center
2 Defendants and impose a constructive trust and/or equitable lien on the
3 Surgery Center Defendants.

4 (3) That the Court order restitution of all ill-gotten gains and impose a
5 constructive trust and/or equitable lien on the Defendants.

6 (4) That the Court award punitive damages against the Defendants in
7 an amount to be proven at trial.

8 (5) That the Court award reasonable attorneys' fees and costs to
9 Leprino.

10 (6) That Leprino be granted all such other legal and equitable relief as
11 the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 A jury trial is requested for all issues so triable.

14
15 Dated: October 11, 2022

Respectfully submitted,

16 HANSON BRIDGETT LLP

17 By: 

18 KATHERINE A. BOWLES
19 Attorneys for Plaintiffs
20 LEPRINO FOODS COMPANY
21 AND LEPRINO FOODS HEALTH &
22 WELFARE PLAN
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